



Walker
&
Jocke

a legal professional association

Ralph E. Jocke

Patent
&
Trademark Law

May 2, 2002

Director of Technology Center 3600
Commissioner for Patents
Washington, D.C. 20231

RECEIVED

MAY 10 2002

GROUP 3600

Attn: Art Unit 3651
Patent Examiner Jeffrey A. Shapiro

Re: **Application Serial No.:** 09/288,685
Confirmation No.: 7773
Applicants: David T. Frederick
Title: Medical Cabinet With Adjustable Drawers
Docket No.: D-1108

Sir:

Please find enclosed a Petition pursuant to 37 C.F.R. § 1.181 for Withdrawal of Holding of Noncompliance with 37 CFR § 1.192(c) for filing in the above case. Also enclosed is a petition requesting clarification of the record.

No fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with the filing of the Petition, and any other fee due, to Deposit Account 10-0637.

Very truly yours,

Ralph E. Jocke
Reg. No. 31,029

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Director of Technology Center 3600, Commissioner for Patents and Trademarks, Washington, D.C. 20231 this 31 day of May 2002.

EV044451998US

Express Mail Label No.

Ralph E. Jocke

330 • 721 • 0000
MEDINA

330 • 225 • 1669
CLEVELAND

330 • 722 • 6446
FACSIMILE

rej@walkerandjocke.com
E-MAIL

231 South Broadway, Medina, Ohio U.S.A. 44256-2601



D-1108

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
David T. Frederick)	
Serial No.: 09/288,685)	Art Unit 3651
Filed: April 9, 1999)	
Title: Medical Cabinet With)	Patent Examiner
Adjustable Drawers)	Jeffrey A. Shapiro

RECEIVED
MAY 10 2002
GROUP 3600

Director of Technology Center 3600
Commissioner for Patents
Washington, D.C. 20231

Sir:

Appellant received an Office Action ("Action") dated March 5, 2002 indicating that the appeal brief was defective. However, it was unclear from the Action as to which rejections were currently pending in the application. The Action indicated that the appeal brief was defective because it was unsigned and because it exceeded an appeal brief size limit. Appellant, in response to the Action, resubmitted a signed appeal brief and a letter requesting clarification on March 14, 2002. Appellant's letter also respectfully requested reconsideration and withdrawal of the apparent holding of defective appeal brief.

Appellant has not yet received a response to the resubmitted signed appeal brief and the letter of March 14, 2002. Thus, Appellant submits the following petition. If a request for reconsideration is again required, then this petition should be considered as such.

Petition For Clarification Of The Record

It is unclear from the record which rejections are currently pending in the application. Appellant requests that the record be clarified.

The Action, as best understood, indicated that the originally filed appeal brief was unsigned and required a signed copy thereof. (Appellant resubmitted a signed appeal brief on March 14, 2002). This indicated to Appellant that the rejections to which the appeal brief pertained were still in effect. Thus, with the Action's reference to rejections, it was unclear whether the Action was an Examiner's Answer.

However, the Action also apparently refers to other rejections different from which the appeal was taken, i.e., new grounds of rejection. Yet there is no indication or statement in the Action that prosecution has been reopened. Nor is the Action in compliance with the procedural rules of the Office (MPEP § 1208.02) for reopening prosecution. Furthermore, because of the Action's requirement for a signed copy of the appeal brief originally filed 12/17/01, one would conclude that prosecution had not been reopened. That is, why would the Office require a signed copy of the originally filed appeal brief if they were reopening prosecution? If the Office was reopening prosecution then the appeal brief would be moot.

Additionally, Appellant has not been presented any evidence that the Examiner obtained supervisory approval to reopen prosecution after the appeal (MPEP § 1208.01, 1208.02).

Appellant requests evidence of the approval on his copy of the Action (if the prosecution is indeed being reopened).

Furthermore, Appellant notes that the Action's rejection involving numbered paragraph 7 (Action page 4) appears to rely on Krivec. Appellant's previously filed appeal brief already addressed rejections based on Krivec. Thus, the Action's reliance on Krivec is another example that prosecution has not been reopened and that Appellant's appeal brief remains in effect.

Thus, it is unclear whether the Action is (1) a Notification of defective appeal brief; (2) a reopening of prosecution; or (3) an Examiner's Answer. Thus, the Action is defective.

Until the Office removes the ambiguity from the unclear and confusing record, Appellant has to conclude that the Action, as best understood, is not an Examiner's Answer and that prosecution has not been reopened. Thus, the rejections from which the appeal was taken are the only rejections pending. Therefore, as best understood, Appellant's appeal brief remains in effect.

Appellant respectfully requests that the petition be granted to instruct the Office to clarify the record (or produce an Examiner's Answer).

Petition For Withdrawal of Holding of Defective Appeal Brief

Appellant respectfully requests reconsideration and withdrawal of the apparent holding of defective appeal brief. The Action indicated that the originally filed appeal brief was unsigned. However, Appellant resubmitted a signed appeal brief on March 14, 2002. Thus, Appellant petitions that the holding of defective appeal brief be removed.

In the Action, Appellant's appeal brief was asserted by the Office to also be defective because it exceeded an alleged appeal brief size limit. That is, the appeal brief was held to exceed an alleged 30-page, 14,000 words, or 1,300 lines limitation. Appellant maintains that this is not a legal basis for holding the appeal brief defective and in noncompliance with 37 C.F.R. § 1.192(c).

Additionally, unless the Office is holding all appeal briefs to a specific (lower) size limit (which it is not), then the Office's action against Appellant constitutes action which is arbitrary and capricious, and a violation of Appellant's Due Process and Equal Protection rights.

Furthermore, the Office has previously granted petitions (for withdrawal of holding of defective appeal brief) regarding the identical issue of alleged appeal brief size limitations. That is, the Office has already decided that there are no appeal brief size limitations on numerous prior occasions. Thus, Appellant's petition for withdrawal of holding of defective appeal brief should be granted.

Several notices of defective appeal brief due to alleged appeal brief size limitations, like the present notice, were issued from Art Unit 3651. These notices have involved different Examiners. Thus, Appellant also petitions that the Office please inform the "supervisor" (as best understood, Mr. Christopher P. Ellis) of Art Unit 3651 that actions regarding appeal brief size limitations must not be issued therefrom because they are without legal basis. Appellant makes this request so that the Office does not have to be again burdened with future petitions regarding this same matter from this same Art Unit.

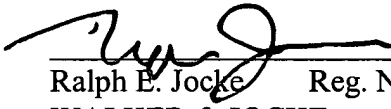
Appellant notes that the Notification does not mention any other defective brief issues. Hence, Appellant concludes that the Examiner did not find any other defective brief issues during

his complete review of Appellant's entire Brief in accordance with his examining duties.

Therefore, Appellant also respectfully request that the Examiner be instructed to write an Examiner's Answer so that this application may properly proceed without further delay on its way to the Board of Patent Appeals and Interferences.

Appellant's petitions should be granted for the reasons presented herein. The undersigned will be happy to discuss any aspect of the Application by telephone at the Office's convenience.

Respectfully submitted,



Ralph E. Jocke Reg. No. 31,029
WALKER & JOCKE
231 South Broadway
Medina, Ohio 44256
(330) 721-0000